



Federal Communications Commission
Washington, D.C. 20554

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Re: Petition for Reconsideration of Grant of Various
Applications for Assignment of License from Emmis
Television License, LLC

Dear Counsel:

This is in regard to the petition for reconsideration filed by Broadcast Company of the Americas, LLC (BCA) of our grant of the applications to assign the licenses of several television stations that were controlled by Emmis Broadcasting License, LLC (Emmis) to Montecito Broadcast Group, LLC and Radio One Licenses, LLC.¹ BCA had filed a petition to deny those

¹ A list of the applications covered by this letter is attached as Exhibit A.

applications. We denied the petition and granted those applications.² For the reasons stated below, we deny the petition for reconsideration.

BCA states that it is in the business of providing programming over Mexican stations pursuant to Section 325 of the Communications Act.³ In its September 29, 2005 Petition to Deny, BCA contended that Emmis and another entity, Lazer Broadcasting Corporation (Lazer),⁴ abused Commission processes in a proceeding involving Section 325 applications filed by BCA to provide programming over the Class B and Class C1 facilities of station XHBCE-FM, Ensenada, Baja North California, Mexico. BCA alleged “willful misrepresentation, lack of candor and abuse of the Commission’s process” by Emmis in opposing BCA’s application which BCA argued rendered Emmis unqualified to be a Commission licensee. Therefore, BCA argued that the assignment applications that were the subject of the *Letter Decision* should have been dismissed.

In their petition to deny BCA’s Section 325 applications, Emmis and Lazer alleged that the licensee of XHBCE-FM had constructed facilities that had not been coordinated with the United States and that XHBCE-FM’s Class B facilities were not constructed at the appropriate location. That petition further stated that the antenna of XHBCE-FM’s Class C1 facility was pointed to place its major lobe to the northwest, that those facilities were operating when they should not have been and that they were causing interference to Lazer’s station KXRS(FM), Hemet, California.

The issues raised in the Section 325(c) were resolved by the International Bureau, which issued BCA an authorization to deliver programming to the Class C1 facility of XHBCE-FM.⁵ The

² *Emmis Television License, LLC*, 20 FCC Rcd 19073 (2005) (*Letter Decision*). In that decision, we deferred action on the application of WBPG(TV), Gulf Shores, Alabama pending action on the station’s renewal application. The renewal and the assignment were subsequently granted.

³ Section 325(c) of the Communications Act states:

No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefore.

Section 325 applications are handled by the Commission’s International Bureau. This letter does not represent a ruling or comment on the merits of BCA’s Section 325 applications.

⁴ Lazer is not a party to this proceeding.

⁵ *Broadcast Company of the Americas*, Order and Authorization, 37 Communications Reg. (P&F) 1144 (IB 2006). The order also dismissed BCA’s request to deliver programming to the Class B facility of XHBCE-FM.

only issues before us are whether, as alleged by BCA, the *Letter Decision* contained fundamental errors; whether we erred when we found that BCA had not demonstrated that it had standing; whether we erred by finding that Emmis was not guilty of abuse of process; and whether we erred in finding that Emmis had not misrepresented facts or lacked candor in the Section 325(c) proceedings.

The petition for reconsideration claims that the *Letter Decision* contained fundamental errors. In particular, BCA claims that the *Letter Decision* implies that BCA agreed with Emmis's claims concerning the construction of the XHBCE-FM facility at the incorrect location. Emmis had claimed that the facility was located over 2 kilometers from its authorized location while BCA claimed the difference was "a few hundred feet." The *Letter Decision* found, as BCA again concedes in its petition for reconsideration, that the facility was constructed at the wrong location. The *Letter Decision* stated that the accuracy of each party's allegations in the 325(c) proceeding and the weight to be given to those allegations would be determined by the International Bureau, which it was. The question before us in our previous decision was whether there was a reasonable basis for Emmis's allegations. Based on the record, we found that there was a reasonable basis for Emmis to allege the facilities were constructed at the wrong location, even if the precise location where the facilities were constructed was in dispute.

Our findings regarding BCA's claim of standing are moot. Although we found that BCA had failed to demonstrate standing, we went on to consider its claims on the merits.

In its order on *Character Qualifications*, the Commission defined "abuse of process" as "serious willful misconduct that directly threatens the integrity of the Commission's licensing processes."⁶ An example of such misconduct is the filing of a "strike petition," which is the essence of what BCA alleged that Emmis did in the Section 325 proceeding. In determining whether a pleading is a strike petition, the Commission considers several factors: (1) statements by the petitioner's principals or officers admitting the obstructive purpose; (2) the withholding of information relevant to disposition of the issues raised; (3) the absence of any reasonable basis for the allegations raised in the petition; (4) economic motivation indicating a delaying purpose; and (5) other conduct by the petitioner.⁷ In this case, these factors have not been demonstrated, either by the previous petition to deny or by the petition for reconsideration. The petition for reconsideration simply reprises the arguments made in the petition to deny by BCA, including the supposed misrepresentation regarding XHBCE-FM's location, allegations regarding the station's operating parameters and supposed noncooperation by Emmis's engineers with BCA. In the *Letter Decision*, we found that BCA had failed to present facts or arguments, including those presented again in its petition for reconsideration, that would warrant finding that Emmis had filed a strike petition or had committed abuse of process. A petition for reconsideration will

⁶ *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986).

⁷ See *Radio Carrollton*, 69 FCC 2d 1138, 1150 (1978), clarified, 69 FCC 2d 424 (1978), recon. denied, 72 FCC 2d 264 (1979), aff'd sub nom., *Faulkner Radio, Inc. v. FCC*, No. 79-1749 (D.C. Cir. October 15, 1980), cert. denied, 450 U.S. 1041 (1981).

be rejected when it is basically a restatement of the arguments presented in a previous petition to deny.⁸ Therefore, we deny BCA's petition for reconsideration.

ACCORDINGLY, IT IS ORDERED THAT the petition for reconsideration filed by Broadcast Company of the Americas, LLC IS DENIED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁸ *WAIT Radio*, 47 R.R. 2d 1556 (1980).

EXHIBIT A

<u>Station</u>	<u>Id No.</u>	<u>City of License</u>	<u>File No.</u>
KHON-TV	4144	Honolulu, HI	BALCT-20051005ACI
KHAW-TV	4145	Hilo, HI	BALCT-20051005ACJ
KAIH-TV	4145	Wailuku, HI	BALCT-20051005ACK
KOIN(TV)	35380	Portland, OR	BALCT-20051005ACM
KSNW(TV)	72358	Wichita, KS	BALCT-20051005ADA
KSNC(TV)	72359	Great Bend, KS	BALCT-20051005ADB
KSNG(TV)	72361	Garden City, KS	BALCT-20051005ADC
KSNK(TV)	72362	McCook, NE	BALCT-20051005ADD
KSNT(TV)	67335	Topeka, KS	BALCT-20051005ADH
WHHL(FM)	74578	Jerseyville, IL	BALH-20051006ACG